

LR:tlu

11/15/2004

1 **AN ACT** *to amend* 48.295 (1); and *to create* 48.295 (2c) of the statutes; **relating to:**
 2 specifying that evidentiary privilege does not apply to statements made by a parent
 3 during the course of an alcohol and drug abuse assessment or a mental, physical,
 4 psychological or developmental examination of the parent in a termination of
 5 parental rights proceeding.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the joint legislative council’s special committee on adoption and termination and parental rights law.

Under current law, section 48.295 of the statutes provides for mental, physical, psychological or developmental examinations and alcohol and other drug abuse assessments of various parties during the course of proceeding under ch. 48, including termination of parental rights proceedings.

This draft specifies that statements made by a parent in the course of an examination or assessment are not privileged.

6 **SECTION 1.** 48.295 (1) of the statutes is amended to read:

7 48.295 (1) After the filing of a petition and upon a finding by the court that reasonable
 8 cause exists to warrant ~~an~~ a physical, psychological, mental, or developmental examination
 9 or an alcohol and other drug abuse assessment that conforms to the criteria specified under s.
 10 48.547 (4), the court may order any child coming within its jurisdiction to be examined as an
 11 outpatient by personnel in an approved treatment facility for alcohol and other drug abuse, by
 12 a physician, psychiatrist or licensed psychologist, or by another expert appointed by the court
 13 holding at least a master’s degree in social work or another related field of child development,
 14 in order that the child’s physical, psychological, alcohol or other drug dependency, mental or

1 developmental condition may be considered. The court may also order an examination or an
2 alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547
3 (4) of a parent, guardian or legal custodian whose ability to care for a child is at issue before
4 the court or of an expectant mother whose ability to control her use of alcohol beverages,
5 controlled substances or controlled substance analogs is at issue before the court. The court
6 shall hear any objections by the child, the child's parents, guardian or legal custodian to the
7 request for such an examination or assessment before ordering the examination or assessment.
8 The expenses of an examination, if approved by the court, shall be paid by the county of the
9 court ordering the examination in a county having a population of less than 500,000 or by the
10 department in a county having a population of 500,000 or more. The payment for an alcohol
11 and other drug abuse assessment shall be in accordance with s. 48.361.

NOTE: Adds language to clarify that the "examination" referred to in s.
48.295(1) is a physical, psychological, mental or developmental
examination, as is specified in the title to this statutory section.

12 **SECTION 2.** 48.295 (2c) of the statutes is created to read:

13 48.295 (2c) Statements made by a parent in the course of an assessment or examination
14 performed under sub. (1) are not privileged.

NOTE: Provides that statements made by a parent in the course of an
alcohol or drug abuse assessment or physical, psychological, mental or
developmental examination under 48.295(1) are not privileged.

COMMENT: Should this exclusion from privilege apply only to
statements made by parents during the course of an assessment or
examination, or should it also apply to statements made by other persons
who might be subject to such examinations in ch. 48 proceedings?